

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SALINAS CITY ELEMENTARY SCHOOL
DISTRICT; MONTEREY COUNTY
OFFICE OF EDUCATION.

OAH CASE NO. 2013071259

ORDER DENYING MOTION TO
DISMISS

On July 26, 2013, Student's parents on behalf of Student (Student) filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH), naming the Salinas City Elementary School District (District) and the Monterey County Office of Education (COE). On August 27, 2013, COE filed a motion to be dismissed from the case. Relying on the declaration of the Interim Director of Special Education for COE, COE contends that it is not the local education agency responsible for Student's education.

On August 30, 2013, Student filed an opposition to the motion. Student argues that COE assessed Student and provided special education placement and services to Student. Therefore, Student believes that COE is a proper party to this case.

APPLICABLE LAW

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

DISCUSSION

COE fits the statutory definition of a public agency under the law. It is a county office of education which is providing special education and related services to Student. (Ed. Code §§ 56500 and 56028.5.) OAH has jurisdiction to hear this case, including Student's claims against COE.

Essentially, COE has filed a motion for summary judgment. Based on facts alleged in a declaration, COE contends that it should win as a matter of law.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure. Here, COE's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits.

ORDER

COE's motion to dismiss is denied. The matter shall proceed as scheduled.

Dated: September 3, 2013

/s/

SUSAN RUFF

Administrative Law Judge

Office of Administrative Hearings